KEE SU NGOY

v.

TEH BOK

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL SUIT NO. 353 OF 1982]
15 JULY 1989

TORT: *Injuries suffered as a result of negligence - Breach of statutory duties - Sections 14, 20 of the Factories and Machinery Act 1967.*

DAMAGES: *Right hand amputated through the wrist joint - Pain and suffering - Loss of amenities - Costs of artificial limb and cosmetic hand - Loss of earning capacity.*

The plaintiff in this case a worker at the defendant's factory was injured in an accident when operating a machine in the defendant's factory as a result of which the plaintiff's right hand had to be amputated through the wrist joint. The plaintiff sued the defendant for negligence and damages.

Evidence was adduced to show that the machine had not been serviced annually, that the operation of the machine was an inherently dangerous occupation unless special care was taken to see that the electrical connections were in proper functioning order, that the only training received by the plaintiff was the instructions that she got from a co-worker which lasted for about ten minutes and that the plaintiff who had not been previously exposed to any sort of machinery had received inadequate training.

Held:

[1] The Judge accepted all the evidence adduced and was satisfied that there was a breach of ss. 14 and 26 of the Factory and Machinery Act 1967. The evidence shows a callous attitude on the part of the management with regard to the safety of its workers in breach of statutory duties under the Act.

[2] The sum of RM40,000 was awarded as general damages for pain and suffering and loss of amenities. The sum of RM3,780 at 3% interest per annum from the date of accident was awarded as special damages for an artificial limb. The sum of RM27,500 was awarded as to the cost of the future renewals of the artificial limb and a cosmetic hand which was required in addition to the artificial limb. The sum of RM8,000 was awarded to the plaintiff for loss of earning capacity.

Legislation referred to:
Factories and Machinery Act 1967, ss. 14, 26

For the plaintiff - N. Jegatheesan; M/s. John Ang & Jega
For the defendant - M. Varughese; M/s. Varughese & Co.

JUDGMENT

LC Vohrah J:

I accept the evidence of the Assistant Factory Inspector, who examined the machine 3 days after the accident which occurred on 21 October 1981, that the limit switches were not functioning properly at the time of the accident. It is clear from the evidence of the defendant's husband who managed the factory that the machine which was 3 years old had

not been serviced annually. The inspection report D5 which he submitted and relied heavily on related to an inspection of the factory on 5 January 1981 more than 9 months before the accident and said nothing about the condition of the machine at the time of the inspection. His evidence that the ram moved 3 to 5 times every minute so that the plaintiff had to put her right hand into the space between the ram and moulder that number of times to remove the finished plastic handles from the mould would indicate that the operation of the machine was an inherently dangerous occupation unless special care was taken to see that the electrical connections were in proper functioning order. In my view there was a breach of s. 14 of the Factory and Machinery Act 1967. I have no reason to doubt the evidence of the plaintiff that when she reported for work on the first day the only training she received on how to operate the machine was the instruction lasting about 10 minutes she got from her more experienced Malay co-worker. I also accept the evidence of Assistant Factory Inspector to the effect that the plaintiff aged 17 at the material time and not having previously been exposed to any sort of machinery received inadequate training contrary to s. 26 of the Act. In my view the evidence shows a callous attitude on the part of the management with regard to the safety of its workers in breach of statutory duties under the Act. The defendant has pleaded contributory negligence in para. 5 of her statement of defence but none of the particulars have been established in evidence. I accordingly find the defendant fully liable for the severe crust injury to the plaintiff's right hand.

The accident resulted in the plaintiff's right hand having to be amputated through the wrist joint. Having regard to recent awards in other Courts for similar injury, I would award the sum of RM40,000 as general damages for pain and suffering and loss of amenities. This sum will bear interest at 6% per annum from the date of the service of the writ.

The plaintiff actually spent S$2,180 on an artificial limb on 16 September 1982 and apparently a further sum of S$1,600 on a cosmetic hand when the value of the ringgit was roughly equivalent to the Singapore dollar. I would accordingly award her the sum of RM3,780 at 3% interest per annum from the date of the accident as special damages. The evidence of the prosthetist suggests that the plaintiff also requires a cosmetic hand in addition to the artificial limb. The life-span of an artificial limb/cosmetic hand is about 5 years and she would therefore require 5 sets until the age of 55. The total cost of an artificial limb and of a cosmetic hand now is S$4,400, equivalent roughly to RM5,500. I would accordingly award the plaintiff the sum of RM27,500 as the cost of future renewals. This sum will bear no interest.

The plaintiff was unemployed for 35 months after the accident thus suffering a loss of RM180 per month for that period amounting to RM6,300 which sum will bear interest at the rate of 3% per annum from the date of the accident. The plaintiff is now married. She says she is unable to find employment because of her disability. There is no evidence that there is any necessity for her to find gainful employment in her new status as a housewife which status however must necessarily have an economic value having regard to the judicial pronouncements in other Courts. I would prefer to award a sum for loss of earning capacity as distinct from loss of future earnings in the event that she is thrown upon the labour market should her marriage break down or for some other reasons she has need to find gainful employment. I would in the circumstances award her the sum of RM8,000 for loss of earning capacity which sum will bear no interest. Costs to be taxed or agreed.

Also found at [1989] 2 CLJ 841